PEH WEE LEE & ANOR v. PENDAFTAR HAKMILIK NEGERI SEMBILAN & ORS

COURT OF APPEAL, PUTRAJAYA
UMI KALTHUM ABDUL MAJID JCA
ABDUL RAHMAN SEBLI JCA
ZALEHA YUSOF JCA
[CIVIL APPEAL NO: N-01(IM)(NCVC)-406-10-2016]
14 DECEMBER 2017

JURISDICTION: *Sessions Court – Prohibitory order – Prohibitory order issued in relation to immovable property – Whether Sessions Court has jurisdiction to issue prohibitory order – Whether jurisdiction limited by s. 69 of Subordinate Courts Act 1948 – Whether prohibitory order should have been obtained at High Court – Rules of Court 2012, O. 1 r. 4(2) & O. 47 r. 6(a)*

WORDS & PHRASES: *'court' – National Land Code, s. 334 – Whether High Court or Sessions Court – Use of small 'c' in s. 334 – Whether use of capital 'C' in s. 5 to interpret 'Court' meant High Court in Malaya – Whether court of competent jurisdiction to issue prohibitory order for purpose of s. 334 was High Court in Malaya – Whether Sessions Court lacked jurisdiction to issue prohibitory order*

The plaintiffs commenced a suit in the Sessions Court against one Aidil Chong for the recovery of debt pursuant to an agreement between the plaintiffs and Aidil Chong. The plaintiffs obtained a judgment in default and proceeded to apply for a prohibitory order ('PO') against Aidil Chong's property and it was duly granted by the Sessions Court. However, the plaintiffs' presentation of the PO for registration in the Register of Land Titles was rejected by the Registrar of Titles on the ground that the Sessions Court does not have the jurisdiction to issue the PO. Dissatisfied, the plaintiffs filed an originating summons against the defendants at the High Court, seeking, amongst others, a declaration that the PO was issued by a court having jurisdiction in respect of the matters under s. 334 of the National Land Code ('NLC'). However, the plaintiffs' application was dismissed. Hence this appeal by the plaintiffs on one core issue *ie*, whether the Sessions Court has the jurisdiction to issue the PO. It was the plaintiffs' contention that the law provides for the Sessions Court to issue the PO referring to, *inter alia*, O. 47 r. 6(a), O. 1 r. 2 and O. 1 r. 4(2) of the Rules of Court 2012 ('ROC')

Held (dismissing appeal with costs)
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) Section 65(1) of the Subordinate Courts Act 1948 ('SCA 1948') expressly provides limitations to the jurisdiction of the Sessions Court by stating 'Subject to the limitations contained in this Act'. One such limitations is spelt out in s. 69 which provides that the 'Sessions Courts shall have no jurisdiction ... relating to immovable property except as

provided in ss. 70 and 71'. As ss. 70 and 71 of the SCA 1948 did not apply to this case, the Sessions Court was generally not clothed with the necessary jurisdiction to deal with immovable property/land. (para 17)

(2) Section 334 of the NLC defines the term 'prohibitory order'. However, the word 'court' used in s. 334 is spelt with a small 'c'. In the interpretation section of the NLC, s. 5, there is no interpretation of the word 'court' with a small 'c', but there is the interpretation of the word 'Court' with a capital 'C' to mean 'the High Court in Malaya'. Thus, a court of competent jurisdiction to issue a PO for the purposes of s. 334 of the NLC is the High Court in Malaya and not the Sessions Court. (paras 18 & 19)

(3) Section 25 of the Courts of Judicature Act 1964 ('CJA') provides for the powers of the High Court and item 1 of Schedule to the CJA provides for the prerogative writs which can be issued by the High Court and it includes 'prohibition'. There is no equivalent/similar provision to s. 25(2) read with item 1 of the Schedule to the CJA in relation to prohibition applicable to the Sessions Court under the SCA 1948. The PO obtained herein by the plaintiffs was in relation to an enforcement of a judgment in default to prohibit the landowner from any dealing with the land. Thus, the plaintiffs' action was an action for the recovery of debt or default judgment and did not fall under the exceptions provided in s. 69(a) of the SCA 1948. The proper cause of action that the plaintiffs should have taken was to obtain a PO at the High Court. (paras 20-22)

(4) The court disagreed with the plaintiff's submission that since the judgment in default was issued by the Sessions Court, the application for PO must also necessarily be made to the Sessions Court under O. 47 of the ROC seeing that under O. 47 r. 6(a), the word 'Court' was spelt with a capital 'C' and under O. 1 r. 4(2), the word 'Court' with a capital 'C' has been defined to include the Sessions Court. Order 1 r. 4(2) of the ROC couched the interpretation of the word 'Court' with capital 'C' as 'In these Rules, unless the context otherwise requires...'. Therefore, for the purposes of O. 47 r. 6(a) the 'Court' must refer, in context, to the High Court and not to the Sessions Court. (para 22)

(5) Order 47 is in the ROC, which Rules are in the nature of delegated/subsidiary legislation to the enabling Acts of Parliament. Therefore, the ROC cannot provide for matters which are in contradiction with Acts of Parliament. Hence, for the purpose of this appeal, the ROC cannot override the provisions of s. 69 of the SCA 1948. To do so would be *ultra vires* the enabling Act. Order 47 being a general provision must be read together with s. 334 of the NLC as it is the specific legislation pertaining to land. Based on the principle of *generalia specialibus non derogant*, the general provisions of O. 47 of the ROC do not supersede the provisions of the specific law in the form of s. 334 of the NLC. (paras 23 & 24)

(6) Since the PO was not issued by a court of competent jurisdiction, *ie*, the High Court in Malaya, the rejection by the Registrar of the presentation for the registration of the PO was correct. The Registrar had not acted *ultra vires* of the powers conferred upon him. (para 25)

Bahasa Malaysia *Headnotes*

Plaintif-plaintif memulakan guaman di Mahkamah Sesyen terhadap seorang bernama Aidil Chong bagi mendapatkan semula hutang berikutan satu perjanjian antara plaintif-plaintif dan Aidil Chong. Plaintif-plaintif memperoleh penghakiman ingkar dan meneruskan dengan permohonan perintah larangan ('PO') terhadap hartanah Aidil Chong dan dibenarkan sewajarnya oleh Mahkamah Sesyen. Walau bagaimanapun, pengemukaan PO untuk pendaftaran dalam Daftar Hak Milik Tanah oleh plaintif-plaintif ditolak oleh Pendaftar Hakmilik atas alasan bahawa Mahkamah Sesyen tiada bidang kuasa untuk mengeluarkan PO. Tidak berpuas hati, plaintif-plaintif memfailkan saman pemula terhadap defendan-defendan di Mahkamah Tinggi, memohon, antara lain, deklarasi bahawa PO tersebut dikeluarkan oleh mahkamah yang mempunyai bidang kuasa berkaitan perkara-perkara bawah s. 334 Kanun Tanah Negara ('KTN'). Walau bagaimanapun, permohonan plaintif-plaintif ditolak. Dengan itu, rayuan ini oleh plaintif-plaintif atas isu utama, iaitu, sama ada Mahkamah Sesyen mempunyai bidang kuasa untuk mengeluarkan PO. Plaintif-plaintif menghujahkan bahawa undang-undang memperuntukkan Mahkamah Sesyen mengeluarkan PO dengan merujuk pada, antara lain, A. 47 k. 6(a), A. 1 k. 2 dan A. 1 k. 4(2) Kaedah-Kaedah Mahkamah 2012 ('KKM').

Diputuskan (menolak rayuan dengan kos)
Oleh Umi Kalthum Abdul Majid HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 65(1) Akta Mahkamah Rendah 1948 ('AMR 1948') jelas memperuntukkan batasan bagi bidang kuasa Mahkamah Sesyen dengan menyatakan 'Tertakluk kepada batasan yang terkandung dalam Akta ini'. Salah satu batasan dinyatakan dalam s. 69 yang memperuntukkan bahawa 'Mahkamah Sesyen tidak mempunyai bidang kuasa … berhubungan harta tak alih kecuali yang diperuntukkan dalam ss. 70 dan 71'. Oleh sebab ss. 70 dan 71 AMR 1948 tidak diguna pakai dalam kes ini, Mahkamah Sesyen secara amnya tidak mempunyai bidang kuasa yang perlu untuk menangani harta/tanah tak alih.

(2) Seksyen 334 KTN mentakrif terma 'perintah larangan'. Walau bagaimanapun, perkataan 'mahkamah' yang digunakan dalam s. 334 dieja menggunakan 'm' kecil. Dalam seksyen tafsiran KTN, s. 5, tiada pentafsiran bagi perkataan 'mahkamah' dengan 'm' kecil, tetapi pentafsiran perkataan 'Mahkamah' dengan 'M' besar bermaksud 'Mahkamah Tinggi di Malaya'. Oleh itu, mahkamah yang mempunyai bidang kuasa kompeten untuk mengeluarkan PO untuk tujuan s. 334 KTN adalah Mahkamah Tinggi di Malaya dan bukan Mahkamah Sesyen.

(3) Seksyen 25 Akta Mahkamah Kehakiman 1964 ('AMK') memperuntukkan kuasa-kuasa Mahkamah Tinggi dan item 1 Jadual kepada AMK memperuntukkan writ-writ istimewa yang boleh digunakan oleh Mahkamah Tinggi dan ia temasuk 'larangan'. Tiada peruntukan sama/serupa dengan peruntukan s. 25 dibaca bersama-sama dengan item 1 Jadual kepada AMK berkaitan larangan yang terpakai pada Mahkamah Sesyen bawah AMR 1948. Perintah larangan yang diperoleh plaintif-plaintif di sini berkait dengan penguatkuasaan penghakiman ingkar untuk melarang pemilik tanah daripada berurusan tentang tanah itu. Oleh itu, tindakan plaintif-plaintif adalah tindakan untuk memperoleh semula hutang atau penghakiman ingkar dan tidak terangkum bawah pengecualian s. 69(a) AMR 1948. Kausa tindakan wajar plaintif-plaintif adalah sepatutnya memperoleh PO di Mahkamah Tinggi.

(4) Mahkamah tidak bersetuju dengan hujahan plaintif bahawa oleh sebab penghakiman ingkar dikeluarkan oleh Mahkamah Sesyen, permohonan untuk PO perlu dibuat di Mahkamah Sesyen bawah A. 47 KKM memandangkan bawah A. 47 k. 6(a), perkataan 'Mahkamah' dieja dengan 'M' besar dan bawah A. 1 k. 4(2), perkataan 'Mahkamah' dengan 'M' besar ditafsirkan sebagai termasuk Mahkamah Sesyen. Aturan 1 k. 4(2) KKM mentafsirkan perkataan 'Mahkamah' dengan 'M' besar bahawa 'Dalam Kaedah-kaedah ini, kecuali diperuntukkan sebaliknya ...'. Oleh itu, bagi tujuan A. 47 k. 6(a) perkataan 'Mahkamah' mesti merujuk, dalam konteks ini, pada Mahkamah Tinggi dan bukan Mahkamah Sesyen.

(5) Aturan 47 termasuk dalam KKM, yang mana Kaedah-Kaedahnya bersifat perwakilan/perundangan subsidiari kepada Akta Parlimen. Oleh itu KKM tidak boleh membuat peruntukan bagi perkara-perkara yang bercanggah dengan Akta Parlimen. Maka, bagi tujuan rayuan ini, KKM tidak boleh mengatasi peruntukan s. 69 AMR 1948. Berbuat demikian adalah *ultra vires* KTN kerana ia adalah perundangan spesifik berkaitan tanah. Berdasarkan prinsip *generalia specialibus non derogant*, peruntukan am A. 47 KKM tidak boleh mengatasi peruntukan undang-undang spesifik dalam bentuk s. 334 KTN.

(6) Oleh sebab PO tidak dikeluarkan oleh mahkamah yang mempunyai bidang kuasa kompeten, iaitu, Mahkamah Tinggi di Malaya, penolakan pengemukaan PO tersebut untuk pendaftaran oleh Pendaftar adalah betul. Pendaftar tidak bertindak *ultra vires* kuasa yang diperuntukkan terhadapnya.

Case(s) referred to:
PP v. Toh Ah Keat [1976] 1 LNS 118 HC ***(refd)***
Tebin Mostapa v. Hulba-Danyal Balia & Anor [2017] 1 LNS 1071 CA ***(refd)***
Teh Cheng Poh v. PP [1978] 1 LNS 202 PC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 25(2), Schedule item 1
National Land Code, ss. 5, 334
Rules of Court 2012, O. 1 rr. 2, 4(2), O. 47 r. 6(a)
Subordinate Courts Act 1948, ss. 65(1), 69(a), 70, 71

Other source(s) referred to:
Bennion On Statutory Interpretation, 5th edn, p 244

For the appellant - LM Looi & Nadirah Zulkhanain; M/s Dennis Nik & Wong
For the respondent - Iskandar Ali Dewa & Roziaton Mohd Nordin; State Legal Advisors, Negeri Sembilan

[Editor's note: Appeal from High Court, Seremban; Originating Summons No: 24NCvC-15-01-2016 (affirmed).]

Reported by S Barathi

JUDGMENT

Umi Kalthum Abdul Majid JCA:

Introduction

[1] This is an appeal by the appellants/plaintiffs against the decision of the learned Judicial Commissioner (JC) of the Seremban High Court in dismissing the appellants'/plaintiffs' originating summons for a declaration that the prohibitory order dated 28 May 2015 issued by the Johor Bahru Sessions Court pursuant to a Civil Suit No: A52-NCvC-198-12-2014 (prohibitory order) was issued by a court having the jurisdiction in respect of the matters under s. 334 of the National Land Code (the NLC).

[2] For the purpose of this appeal, the parties will be referred to as they were at the High Court.

Background Facts

[3] The background facts of the case can be gleaned from the plaintiffs' written submission. The plaintiffs commenced a suit at the Johor Bahru Sessions Court Civil Suit No. A52-NCvC-198-12-2014 against Aidil Chong bin Abdullah (Aidil Chong) for the recovery of debt in the sum of RM332,219.53 pursuant to an agreement dated 22 May 2014 entered between the plaintiffs and Aidil Chong.

[4] A judgment in default was then obtained against Aidil Chong on 28 May 2015. On the same date, the plaintiffs proceeded to apply for prohibitory order against Aidil Chong's property being land held under Grant 244499, Lot 30186, Mukim Seremban, Seremban, Negeri Sembilan (the land) and the plaintiffs' application was duly granted by the Johor Bahru Sessions Court.

[5] The plaintiffs' solicitors subsequently went to the office of the Registrar of Titles of Negeri Sembilan to present the prohibitory order for the purpose of registration in the Register of Land Titles but the plaintiffs' presentation was rejected by the Registrar on the ground that the Johor Bahru Sessions Court does not have the jurisdiction to issue the prohibitory order.

[6] The plaintiffs, dissatisfied with the refusal of the Registrar to register the said prohibitory order, filed an originating summons against the defendants at the Johor Bahru High Court seeking for, amongst others, a declaration that the prohibitory order dated 28 May 2015 by the Johor Bahru Sessions Court was issued by a court having the jurisdiction in respect of the matters under s. 334 of the NLC.

[7] Upon the application of the plaintiffs, the originating summons was transferred from the Johor Bahru High Court to the Seremban High Court. On 5 August 2017, the learned JC dismissed the plaintiffs' originating summons with costs of RM3,000.

At The High Court

[8] The learned JC dismissed the plaintiffs' amended originating summons in encl. 20 for the following reasons:

(a) Order 47 of the Rules of Court 2012 ("ROC 2012") must be read together with s. 334 of the NLC as it relates to matter pertaining to immovable property;

(b) Order 47 of the ROC 2012 only pertains to the general modes of execution after a judgment has been obtained;

(c) based on s. 334 of the NLC, the High Court is the court with the jurisdiction to hear and to make any order in relation to an immovable property;

(d) section 5 of the NLC has defined "Court" as "the High Court in Malaya";

(e) therefore, the subordinate courts do not have the jurisdiction to deal with land matters;

(f) the prohibitory order can only be obtained from the High Court.

[9] The plaintiffs now appeal against the aforesaid High Court's decision.

The Appeal

[10] Before us, the plaintiffs raised only one core issue, that was:

(a) whether Sessions Court has the jurisdiction to issue prohibitory order.

[11] The plaintiffs argued that the law provides for Sessions Court to issue prohibitory order. Reference was made to O. 47 r. 6(a) of the ROC 2012. The same is reproduced herewith:

Order 47 rule 6(a)

6. Where the property to be seized consists of immovable property or any registered interest therein, the following provisions shall apply;

(a) a seizure shall be made by an order by the **Court** or a Judge prohibiting the judgment debtor from transferring, charging or leasing such property or interest; and for the purpose of this rule, "charging" includes the creation of a lien by deposit of a document of title; …

(emphasis added)

[12] The plaintiffs then made a reference to O. 1 r. 2 of the ROC 2012 to interpret the word "court".

Application (O. 1, r. 2)

2(1) Subject to paragraph (2), these Rules apply to all proceedings in:

(a) the Magistrates' Court;

(b) the Sessions Court; and

(c) the High Court.

[13] The plaintiffs also referred to O. 1 r. 4(2) of the ROC 2012 to further interpret the word "court" with a capital "C".

(2) In these Rules, unless the context otherwise requires, "Court" refers to the Magistrate's Court, or any one or more Magistrates thereof, the Sessions Court, or any one or more Judges thereof, the High Court or any one or more Judges or Judicial Commissioners thereof, whether sitting in Court or in Chambers; but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, rule 9, by virtue of which the authority and jurisdiction of the Registrar of the Court is defined and regulated.

[14] Relying on the above authorities, it was the contention of the plaintiffs that the Sessions Court is equipped with the necessary jurisdiction to issue prohibitory order.

Decision Of The Court

Whether Sessions Court Has The Jurisdiction To Issue Prohibitory Order?

[15] We were of the view that the Sessions Court has no jurisdiction to issue prohibitory order based on the following reasons.

[16] First, in determining the extent and scope of jurisdiction of a Sessions Court, it is essential to refer to the Subordinate Courts Act 1948 (SCA 1948), in particular, s. 65(1) and s. 69 where it is stated as follows:

Civil jurisdiction of Sessions Courts

65(1) Subject to the limitations contained in this Act, a Sessions Court shall have:

(a) unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress;

(b) jurisdiction to try all other actions and suits of a civil nature where the amount in dispute or the value of the subject matter does not exceed one million ringgit; and

(c) without prejudice to the generality of paragraph (b), jurisdiction to try all actions and suits of a civil nature for the specific performance or rescission of contracts or for cancellation or rectification of instruments, within the jurisdiction of the Sessions Court …

Exceptions to jurisdiction

69. **Sessions Courts shall have no jurisdiction** in actions, suits or proceedings of a civil nature:

(a) **relating to immovable property except as provided in sections 70 and 71;** …

(emphasis added)

[17] Under s. 65(1) of the SCA 1948, the Act expressly provides limitations to the jurisdiction of the Sessions Court by stating "Subject to the limitations contained in this Act". One such limitation is spelt out in s. 69. Section 69 specifically provides that the "Sessions Courts shall have no jurisdiction … relating to immovable property except as provided in ss. 70 and 71" (learned counsel for the plaintiffs agreed that ss. 70 and 71 of the SCA 1948 did not apply to this case). As such, the Sessions Court is generally not clothed with the necessary jurisdiction to deal with immovable property/land.

[18] Second, we noted that s. 334 of the NLC defines the term "prohibitory order" as:

334. Meaning of "prohibitory order".

In this Chapter "prohibitory order" means, where land or an interest in land held by a judgment-debtor is to be sold in execution proceedings, an order made pursuant to rules of **court** by **a court** of competent jurisdiction prohibiting the judgment-debtor from effecting any dealing therewith or from effecting such dealing therewith as may be specified in the order.

(emphasis added]

[19] The word "court" used in s. 334 of the NLC is spelt with a small "c". In the interpretation section of the NLC, s. 5, there is no interpretation of the word "court" with a small "c", but there is the interpretation of the word "court" with a capital "C" to mean "the High Court in Malaya". Thus, we concluded a court of competent jurisdiction to issue a prohibitory order for the purposes of s. 334 of the NLC is the High Court in Malaya, and not the Sessions Court.

[20] Thirdly, this was more so when we compared the powers of the High Court under the Courts of Judicature Act 1964 (CJA) with that of the Sessions Court under the SCA 1948. Section 25 of the CJA provides for the "Powers of the High Court" as follows:

> **Powers of the High Court**
>
> 25(1) Without prejudice to the generality of Article 121 of the Constitution *the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.*
>
> (2) *Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:*
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same. (emphasis added)

Item 1 of the Schedule to the CJA provides for the prerogative writs which can be issued by the High Court and it includes "prohibition" as follows:

> SCHEDULE
>
> [Subsection 25(2)]
>
> ADDITIONAL POWERS OF HIGH COURT
>
> **Prerogative Writs**
>
> 1. Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.

There is no equivalent/similar provision to s. 25(2) read with item 1 of the Schedule to the CJA, in relation to prohibition, applicable to the Sessions Court in respect of the same (let alone other prerogative writs/orders) under the SCA 1948. In his book entitled "*Janab's Key To Civil Procedure*", Janab (M) Sdn Bhd, the learned author Hamid Sultan bin Abu Backer, in Chapter 17, had this to say on "Prerogative Writs":

> Chapter 17
>
> **Prerogative Writs**
>
> **17.1 Introduction**
>
> The origin of writs is embedded in the history of the common law and judicial institutions in England. Prerogative means an exclusive or peculiar right or privilege enjoyed by the king of England at common law. Blackstone defines a writ as 'a mandatory letter from the King in Parliament, sealed with his Great Seal, and directed to the sheriff of the county wherein the injury is committed or supposed to be, requiring him to command the wrongdoer or party accused, either to do justice to the complainant, or else appear in court and answer the accusation against him'. Originally the prerogative writ was issued by the King himself and

later by his Chancellor. Presently prerogative writs are issued by the courts, only upon proper cause shown and never as a matter of right. Generally it is issued where there is a direct interference by the government with the liberty and property of the subject and is issued pursuant to the prerogative powers of the crown.

In Malaysia, the relief formerly available by such writs is now available by appropriate action under rules of court. These are orders for:

(a) *mandamus*;

(b) prohibition;

(c) *certiorari*; and

(d) writ of *habeas corpus*.

[21] In this appeal, the prohibitory order obtained by the plaintiffs was in relation to an enforcement of a judgment in default obtained by the plaintiffs against Aidil Chong. The plaintiffs' action in obtaining the prohibitory order from the Sessions Court was to prohibit the landowner from any dealing with the said land. Thus, the plaintiffs' action was an action for the recovery of debt or default judgment and did not fall under the exceptions provided in s. 69(a) of the SCA 1948.

[22] The proper cause of action that the plaintiffs should have taken was to obtain a prohibitory order at the High Court. The plaintiffs submitted that since the judgment in default was issued by the Sessions Court, the application for prohibitory order must also necessarily be made to the Sessions Court under O. 47 of the ROC 2012 seeing that under O. 47 r. 6(a), the word "court" is spelt with a capital "C" and under O. 1 r. 4(2) the word "court" with a capital "C" has been defined to include the Sessions Court. With respect, we were not able to agree with the plaintiffs' submission. We reiterated our interpretation of the relevant provisions of the law referred to before this. Fourthly, it must be remembered that O. 1 r. 4(2) of the ROC 2012 couched the interpretation of the word "court" with a capital "C" as "In these Rules, unless the context otherwise requires, …" We, therefore, were of the view that for the purposes of O. 47 r. 6(a), the "court" must, in context, refer to the High Court and does not refer to the Sessions Court.

[23] Fifthly, O. 47 is in the ROC 2012, which Rules are in the nature of delegated/subsidiary legislation to the enabling Acts of Parliament. Being subsidiary/delegated legislation, the ROC 2012 cannot provide for matters which are in contradiction with the Acts of Parliament; for the purposes of this appeal, the ROC 2012 cannot override the provisions of s. 69 of the SCA 1948. To do so would be *ultra vires* the enabling Act. Francis Bennion in his book entitled *Bennion On Statutory Interpretation*, Lexis Nexis, 5th edn, under the topic "Delegated Legislation", "Section 50. Nature of delegated legislation", p. 244, stated as follows:

A *Must not conflict with law.* Unless the enabling Act so provides, delegated legislation cannot override any Act – and certainly not the enabling Act itself. Indeed it is taken not to be impliedly authorised to override any rule of the general law.

[24] Sixthly, O. 47 of the ROC 2012 is a general provision and must be B read together with s. 334 of the NLC as it involves matters pertaining to immovable property. Matters pertaining to land are governed by the NLC. In this appeal, s. 334 of the NLC is the specific legislation on prohibitory order pertaining to land whereas O. 47 of the ROC 2012 is the general legislation. Based on the principle of *generalia specialibus non derogant*, which C means general words or provisions do not affect special words or provisions (see *Public Prosecutor v. Toh Ah Keat* [1976] 1 LNS 118; [1977] 2 MLJ 87; *Teh Cheng Poh v. Public Prosecutor* [1978] 1 LNS 202; [1979] 1 MLJ 50; *Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2017] 1 LNS 1071; [2017] MLJU 1093), the general provisions of O. 47 of the ROC 2012 do not supersede the provisions of the specific law in the form of s. 334 of the NLC.

D

[25] Since the prohibitory order was not issued by a court of competent jurisdiction, that is, the High Court in Malaya, the rejection by the Registrar of the presentation for the registration of the prohibitory order was correct and the Registrar had not acted *ultra vires* of the powers conferred upon him.

E **Conclusion**

[26] For the reasons stated above, it was our unanimous decision that this appeal be dismissed with costs of RM5,000 and the deposit to be refunded to the plaintiffs.

F

G

H

I